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Chan v. Toronto Standard **Condominium Corp.** No. 1834

Elizabeth Anne Chan, Applicant (Appellant) and Toronto Standard **Condominium Corporation** No. 1834, Respondent (Respondent)

Ontario Court of Appeal

E.E. Gillese J.A., J.C. MacPherson J.A., R.A. Blair J.A.

Heard: May 9, 2012

Judgment: May 14, 2012

Docket: CA C53242

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Proceedings: affirming *Chan v. Toronto Standard **Condominium Corp.** No. 1834 (2011)*, 2011 ONSC 108, 2011 CarswellOnt 76 (Ont. S.C.J.)

Counsel: Elizabeth Anne Chan, George Chan, for Elizabeth Anne Chan

Michael Spears, for Respondent

Subject: Property; Civil Practice and Procedure

Real property --- Condominiums — Declaration

Condominium unit owner applied for removal of lien placed on title to her unit — **Condominium corporation** applied for order that owner and tenants residing in unit comply with provisions of Condominium Act, 1998 and registered declaration and rules of corporation with respect to leasing unit, and for order that owner remove locks installed on interior doors of unit — Owner's application was dismissed and corporation's application was granted — Application judge found that lien was properly registered and that amount claimed to repair damage complied with requirements of declaration and rules of corporation — Owner appealed — Appeal dismissed — There was sufficient evidence to support application judge's essential factual finding that water damage in another unit was caused by leak in owner's unit — Application judge correctly concluded that occupancy in owner's unit was outside declaration and rules of corporation — In addition, evidentiary record was not sufficient to support estoppel grounded argument — Application judge did not err by ordering owner to remove internal locks, as locks were clear violation of declaration.

Real property --- Condominiums — Practice and procedure — Evidence

Affidavit evidence not admitted as fresh evidence on appeal.

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Civil practice and procedure --- Practice on appeal --- Powers and duties of appellate court --- Evidence on appeal ---
New evidence

Affidavit evidence not admitted as fresh evidence on appeal.

Real property --- Condominiums --- Practice and procedure --- Costs

Costs award on full indemnity basis against unit owner upheld.

Statutes considered:

Condominium Act, 1998, S.O. 1998, c. 19

Generally --- referred to

Solicitors Act, R.S.O. 1990, c. S.15

s. 9 --- referred to

APPEAL by condominium unit owner from judgment reported at *Chan v. Toronto Standard Condominium Corp. No. 1834 (2011)*, 2011 ONSC 108, 2011 CarswellOnt 76 (Ont. S.C.J.), dismissing her application to vacate lien registered against title to her unit.

Per curiam:

1 The appellant Elizabeth Chan appeals from the judgment of Allen J. of the Superior Court of Justice dated January 6, 2011. In that judgment, the application judge dismissed the appellant's application to vacate a lien that was registered against title to her condominium unit on the basis that the lien was properly registered in accordance with the notice provisions under the *Condominium Act* and that the amount claimed (\$8502.28 to repair the damage caused by the leak) complied with the requirements of the Declaration and Rules of the Corporation.

2 In the judgment, the application judge also granted the respondent's application to enforce the single family use restriction set out in the Declaration and to order the removal of locks installed by the appellant on some of the interior doors in her unit.

3 The appellant appeals on three bases.

4 First, in relation to the water leak/lien issue, the appellant contends that the application judge made findings of fact in the absence of supporting evidence and ignored important case law in reaching her decision. We disagree. There was sufficient evidence to support the application judge's essential factual finding, namely, that the water damage in unit 2208 was caused by a leak in the appellant's unit, 2308.

5 Second, the appellant contends that the application judge erred by declaring that her unit was not a single family residence. The basis for this submission was that there were many other units in the condominium in which groups of non-family tenants resided.

6 In our view, the application judge was correct to conclude that the occupancy in unit 2308 was outside the

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Declaration and Rules of the Corporation. In addition, there was not a sufficient evidentiary record to support an estoppel grounded argument for the appellant.

7 Third, the appellant submits that the application judge erred by ordering the appellant to remove all locks installed on the interior doors of the unit. We disagree. These locks were a clear violation of the Declaration.

8 In support of its three grounds of appeal, the appellant seeks to introduce fresh evidence, namely, three affidavits. We decline to admit the fresh evidence. Two of the three affidavits are mainly a repetition of the existing affidavits put forward by the appellant and the third, Ms. Mecole's, has no real content or relevance.

9 Finally, the appellant challenges the costs award of \$41,706.28 on a full indemnity basis. We see no basis for interfering with this award. With respect to the appellant's argument that this award may be increased if the respondent seeks 'additional actual costs' above this amount, the appellant will have the right to have those costs, if demanded, assessed under s. 9 of the Solicitors Act.

10 The appeal is dismissed. The respondent is entitled to its costs fixed at \$7,000 inclusive of disbursements and applicable taxes.

Appeal dismissed.

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